



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

FEB 04 2005

Brian Svoboda, Esq.
Perkins Coie LLP
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 5183
Democratic Senatorial Campaign Committee and
David Rudd, in his official capacity as treasurer

Dear Mr. Svoboda:

On February 1, 2005, the Federal Election Commission found that there is reason to believe your clients, the Democratic Senatorial Campaign Committee and David Rudd, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. §§ 102.5 (a)(1)(i) and 106.5(c) & (g)(1)(i) of the Commission's regulations. These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information. Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by

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pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Peter G. Blumberg, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

Democratic Senatorial Campaign Committee
and David Rudd, in his official capacity
as treasurer

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MUR 5183

I. INTRODUCTION

This matter was initiated by the Federal Election Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. This matter concerns the Democratic Senatorial Campaign Committee's ("DSCC") payment of \$100,000 to the Citizenship Education Fund, Inc. for the costs of coordinated partisan get-out-the-vote activity.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

In the fall of 2000, Reverend Jesse L. Jackson Sr. and two non-profit corporations he controlled, the Rainbow-PUSH Coalition, Inc. and the Citizenship Education Fund, Inc. (collectively, "Rainbow/CEF") planned to conduct a partisan get-out-the-vote ("GOTV") and voter registration ("VR") speaking tour. In previous election cycles, Reverend Jackson and his corporations had conducted such tours on behalf of various Democratic Party organizations.

In furtherance of the plan for the 2000 speaking tour, in or around September 2000, Reverend Jackson and other representatives of Rainbow/CEF reached an agreement with officials from the DNC that the Democratic Party would provide up to \$450,000 to Rainbow/CEF to offset the costs of a partisan GOTV/VR campaign that would benefit Democratic Party

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candidates. Subsequent to reaching this agreement, DNC officials advised Rainbow/CEF Chief Financial Officer Billy Owens that \$100,000 of this amount would be paid by the DSCC. Owens contacted the DSCC in September 2000 to finalize the arrangements for payment. The agreed-upon payment of \$100,000 was made from the DSCC nonfederal account in two installment during October 2000. On October 11, 2000, the DSCC made a payment of \$40,000 to CEF with non-federal funds to defray the costs of the speaking tour. Thereafter, the DSCC made a payment of \$60,000 to CEF on October 26, 2000 with non-federal funds to defray the costs of the speaking tour and to fulfill the commitment.¹ The DNC admits that it arranged for the DSCC payments to Rainbow/CEF to cover the cost of coordinated partisan GOTV/VR activities.²

B. The GOTV/VR Tour

In September 2000, a DNC employee, who previously had worked for Rainbow, was detailed to Rainbow/CEF's headquarters in Chicago, Illinois to act as the coordinator of the tour. The coordinator's duties included the preparation of daily itineraries listing where Reverend Jackson would travel, what events he would attend, and with whom he would appear. These itineraries described approximately 120 events on Reverend Jackson's trip schedule, which constituted over 80% of the scheduled appearances, as pertaining to the "DNC/Coordinated Campaign." The coordinator provided briefings to Democratic Party officials back in Washington D.C. concerning

¹ DSCC wire transfer receipts confirmed that \$40,000 was wired from the DSCC's account at Bank of America to CEF's account at South Shore Bank of Chicago on October 11, 2000 and that an additional \$60,000 was wired between these accounts on October 26, 2000.

² Despite evidence suggesting the DSCC was informed of the Jackson speaking tour, cover letters memorializing the wire transfers to CEF signed by the DSCC's Executive Director Jamie Fox state that the "donation is made for charitable purposes and may not be used in connection with any partisan political activities."

the Reverend Jackson's speaking tour. These Democratic Party officials participated in determining Reverend Jackson schedule for the GOTV/VR campaign.

Between September 4, 2000 and election day, November 7, 2000, Reverend Jackson traveled extensively throughout the country, visiting over 50 cities in 39 days, including approximately ten cities that he visited two to five times each. In each city, he participated in the events described by his trip itineraries as "DNC/Coordinated Campaign" events. The costs for staging the events generally were assumed by the local or state Democratic parties. Many of these events involved a joint appearance with Democratic Party Senate and House candidates, and Democratic presidential candidate Al Gore or vice-presidential candidate Joe Lieberman. During these "DNC/Coordinated Campaign" events, Reverend Jackson engaged in partisan GOTV/VR activities.³ Rainbow/CEF's ledgers and vendor invoices establish that the cost of Reverend Jackson's travel for the general election period was approximately \$750,000. The costs were incurred for charter airplanes, lodging, meals, and communications fees.

C. Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits corporations and labor organizations from making contributions in connection with Federal elections, and prohibits political committees from knowingly accepting such contributions.

³ Numerous Senate candidates appeared together with Reverend Jackson at various events, and the DSCC may have assisted in arranging the candidates' participation. The tour coordinator recalls updating numerous Democratic Party officials concerning the tour's itinerary and logistics, but could not recall for certain whether any of her contacts worked for the DSCC.

2 U.S.C. § 441b(a). The Act further prohibits political committees established by a national party committee from accepting in excess of \$20,000 per calendar year from any person.

2 U.S.C. §§ 441a(a)(1)(B) and 441a(f). Each organization which finances political activity in connection with both federal and non-federal elections must follow depository and allocation regulations at 11 C.F.R. §§ 102.5 and 106.5. These rules implement the contribution and expenditure limitations established by 2 U.S.C. §§ 441a and 441b.

National party committees, such as the DSCC, that have established separate federal and non-federal accounts must make all disbursements, contributions, expenditures and transfers by the committee in connection with any federal election from their federal accounts. Only funds subject to the Act's prohibitions and limitations shall be deposited into the federal accounts.⁴

11 C.F.R. § 102.5(a)(1)(i). *See also* 11 C.F.R. § 106.5(a). National party committees, such as the DSCC, that make disbursements in connection with federal and non-federal elections must allocate the costs of certain allocable activities between their federal and non-federal accounts.

11 C.F.R. § 106.5(a). Allocable activities include administrative expenses and the costs of generic voter drives.⁵ 11 C.F.R. § 106.5(c). A party committee that gives non-federal funds to a third party with the knowledge that all or a part of the funds will be used to conduct activities

⁴ The DSCC's non-federal accounts can accept corporate contributions prohibited by 2 U.S.C. § 441b and contributions in excess of the limits prescribed by 2 U.S.C. § 441a(a).

⁵ "Generic voter drives" include "voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.5(a)(2)(iv). Allocable costs, including voter registration and get-out-the vote activities, must be allocated according to the funds expended method established at 11 C.F.R. § 106.5(c)(1). The DSCC must allocate a minimum of 65% of these costs each year to its federal account. 11 C.F.R. § 106.5(c)(2).

which, if engaged in by the party committee directly would have been allocable, must allocate the donation to the third party in the same manner as it would have had the party committee made the expenditure directly. *See FEC v. California Democratic Party*, 1999 WL 33633264 (E.D. Cal., Oct. 14, 1999.) (NO. CIV. S-97-0891GEBPAN); *FEC v. California Democratic Party*, 13 F. Supp. 2d 1031 (ED Calif. 1989). *See also* MUR 3774 (National Republican Senatorial Committee.)

Based on Reverend Jackson's advocacy of specific federal candidates and the fact that his activities were coordinated with the DNC, the purpose of the travel in 2000 was partisan activity conducted in connection with federal elections. Conciliation agreements submitted by the Jackson corporations and the DNC establish that the DSCC made expenditures for a coordinated, partisan get-out-the-vote and voter registration drive out of their non-federal accounts. These payments were made while the DSCC was participating in DNC Coordinated Campaign events with Reverend Jackson. Accordingly, there is reason to believe that the Democratic Senatorial Campaign Committee and David Rudd, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by using excessive and prohibited funds to finance federal election activity, 11 C.F.R. § 102.5(a)(1)(i) and 106.5(g)(1)(i) by failing to make payments from federal accounts, and 11 C.F.R. § 106.5(c) by failing to allocate payments for joint federal and non-federal activities between federal and non-federal accounts.